

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DONALD EDWARD MACK, #391890	§	
VS.	§	CIVIL ACTION NO. 6:06cv421
JEFFERY B. BARNETT, ET AL.	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the complaint should be dismissed pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g). The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit.

The Report and Recommendation noted the Plaintiff’s long history of abuse of court. He had far more than “three strikes” before he filed the case in order to trigger the provisions of § 1915(g). Consequently, he may not proceed unless he was “under imminent danger of serious physical injury” at the time he filed the lawsuit. *See Banos v. O’Guin*, 144 F.3d 883, 884-85 (5th Cir. 1998). The Plaintiff’s lawsuit concerns matters that occurred in 2003 and 2004, which does not satisfy the

exception. Moreover, he already litigated the claims in Civil Action No. 6:04cv187. This lawsuit is an example of the wisdom of Congress when it passed the “three strikes” provision of § 1915(g) to stop inmates from routinely engaging in abuse of court. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). The Plaintiff may resume his lawsuit if he pays the entire filing fee of \$350 within thirty days from the entry of this order. *See Carson v. Johnson*, 112 F.3d 818, 823 (5th Cir. 1997). It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 31st day of October, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE